IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9529 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SMITA PRITAMLAL PAREKH

Versus

GUJARAT PUBLIC SERVICE COMMISSION

Appearance:

1. Special Civil Application No. 9529 of 1998

MR NAVIN K PAHWA for Petitioner No. 1

MR MJ PARIKH for Respondent No. 1

MR NIKHILESH J SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 16/02/2005

ORAL JUDGEMENT

The petitioner had approached this court for

seeking relief for quashing and setting aside the letter issued by the Gujarat Public Service Commission dated 15th July, 1998, wherein, the Public Service Commission had not considered the petitioner for interview to the post of Programmer (Computer) and Government Polytechnic in GES Class-II - Advertisement No. 2 of 1997 on the ground that the petitioner is not possessing the prescribed qualification and not possessing the prescribed experience and by way of interim relief, the petitioner has prayed that the GPSC be directed to call the petitioner for interview for the post of Computer Programmer pursuant to the advertisement No. 2 of 1997 alongwith other eligible candidates.

2. It is the case of the petitioner that the petitioner is having the qualification of Diploma Computer Engineering with First Class and the petitioner worked as programmer in Compucell, Rajkot from 1.8.1987 to 28.2.1989. The petitioner has also worked in A.V. Parekh Technical Institution, Rajkot which is a Department of Tech Education Government of Gujarat from 20.3.1989. The petitioner was working as computer operator and was having experience of programming of more than 2 years in A.V. Parekh Technical Institution and therefore, he is qualified for the post of Computer programmer. It is the case of the petitioner that respondent Commission has on 15th July, 1998 replied to the petitioner that the petitioner will not be called for the interview because the petitioner is not possessing the requisite experience. The petitioner has thereafter, made a representation on 27.7.1998 to the GPSC and the GPSC has replied to the said letter dated 27.7.1998 by letter dated 24.8.1998 that application of the petitioner is not accepted in view of the fact that the petitioner is possessing one and half years experience of programmer whereas the required experience is 2 years. The petitioner has again made a representation dated 28.8.1998.

3. The petitioner has approached this Hon'ble Court and the learned Single Judge had as per order dated 6.11.1998 issued Rule and the notice as to interim relief was made returnable by 19.12.1998. The ex-parte relief was granted in favour of the petitioner in view of the order dated 16.11.1998, which read as under :-

> "Rule. Notice as to interim relief returnable by 19.12.98. In the meanwhile, it is ordered that the petitioner's candidature shall be provisionally considered for the post of Computer Programmer as and when the selections are held

pursuant to the advertisement dt. 17.5.97 and she shall also be interviewed alongwith other candidates and the consideration for the aforesaid post shall not be denied to her on the ground that she lacks the requisite experience. The result of the consideration of her candidature shall be kept in a separate sealed cover. Direct service permitted."

4. Thereafter, as found from the order sheet that the matter was placed before the learned Single Judge on 29.1.1999, by which, the statement was made by the counsel appearing for the petitioner that the ad-interim order, which was granted has been complied with and accordingly, the court has ordered that interim relief is refused as not pressed, meaning thereby, that the petitioner was permitted to appear for interview before the GPSC as permitted by way of ex-parte relief granted in favour of the petitioner.

5. Today, while considering this petition and the relief sought for by way of interim relief, which has already been granted ex-parte by permitting the petitioner to appear in the examination conducted by the Public Service Commission and once the petitioner is permitted to appear in the examination, equally this court is required to see that whether the stand taken by the Public Service Commission for rejecting the application for petitioner for the said post on the ground narrated in letter dated 15th July, 1998 that the petitioner was not possessing the prescribed educational qualification and also not possessing the prescribed experience is proper or not.

6. As found from the reply affidavit filed on behalf of Public Service Commission by Shri S.L. Raol, the Deputy Secretary, Gujarat Public Service Commission, which shows that the petitioner was not having requisite experience in light of the notification issued at Annexure - II to the affidavit in reply. Sub-rule 8 of Rule 8 of the said Notification reads as under :-

"Where the qualifications prescribed for any service or post include a qualification as to practical experience for a given period and applications are invited for such service or post the period of practical experience shall be computed -

(a) Unless otherwise provided in recruitment rule from the date on which requisite

qualifications are obtained.

(b) With reference to the last date fixed for receipt of such application."

7. It is the case of the deponent that petitioner is not possessing the requisite experience of two years of Computer Programming, as required. In fact, the experience of the petitioner as Computer Programmer is of one year and six months only, and therefore, the Commission have not called the petitioner for personal interview. The Commission is legally not empowered to give relaxation in experience to any individual like the petitioner and accordingly, the application form of the petitioner was rejected by the GPSC. Even as per the certificate issued by Principal, A.V. Parekh Technical Institute, Rajkot dated 13.6.1997, it clearly shows that the petitioner was working in the institute as Computer Operator on ad-hoc basis since 1.8.1989 and further that even apart from her regular duties, she has taken active part in programming. Thus, as per the certificate at Annexure - A, the petitioner was working as Computer Operator and not on the post for which she has applied.

8. Considering the order passed by this court in a petition being Special Civil Application No. 9280 of 1998, this case is also squarely covered with the said petition and accordingly, the present petition is required to be dismissed. I am told that pursuant to the fresh advertisement issued by the GPSC for the said post by now, the petitioner is having requisite experience for the said post and the petitioner has applied to the GPSC and as gathered from the counsel appearing for the GPSC that the application of the petitioner is found eligible for the said post.

9. It is also brought to my notice that the Division Bench of this court in similar facts rendered a decision in the matter of K.D. Vohra Vs. Kamleshbhai Gobarbhai Patel, reported in 2003 (2) GLH p.1343, where the Division Bench had an occasion to deal with the Letters Patent Appeal filed by the Appellants petitioners who were appointed on ad-hoc lecturers pending the availability of the regular appointee available through GPSC to the post of Lecturer, Gujarat Education Services Class-II (Collegiate Branch) against the common judgement and order of the learned Single Judge allowing the Special Civil Application and other cognate matters, which were filed by the candidates selected through GPSC as per the recruitment rules applicable to the said posts

and other cognate matters which were filed by the ad-hoc appointees. In the said decision, the Division Bench had considered the English decisions, various decisions of the Apex Court as well as of this court. As found from the facts of the present case, the petitioner was appointed on ad-hoc basis as back as on 1986 and he was selected candidate. At that time, the recruitment rules has not seen the light of the day and selection of the petitioner clearly made on ad-hoc basis, which is apparently found from the appointment order issued by the authority. In that case, though, the petitioners were appointed on ad-hoc basis for a period of 11 months, the petitioner continued on the said post till date and when the advertisement for selection of the candidate for the said post is published, the petitioner has applied for the same and the petitioner was not eligible as he was not fulfilling the required educational qualification. The ad-hoc appointee has no right to be continued to contrary to the recruitment rules nor can be they be ordered to be regularized by any mode not warranted by the statutory rules governing appointment to the cadre of lecturer. The Division bench has also examined for continuation of the ad-hoc appointees where the Division Bench has observed in para 17, which reads as under :-

"Para 17 : It was argued that, from the continuance of the adhoc appointees for long period, it should be inferred that the recruitment rules were relaxed in their favour and they are deemed to have been regularized. The appointments of the appellants and the like were mere local appointments made dehors the rules and such ad hoc appointments could not have been made for a period exceeding one year, without consulting the Public Service Commission. The posts having not been filled up on regular basis in accordance with the statutory rules were required to be treated as vacant for the purpose of undertaking the process of regular recruitment. The terms of appointment of the ad hoc appointees clearly stipulated that they would be relieved when the GPSC candidate or a transferee was available. Such ad hoc status of these appointees did not at any stage alter by any rules or regulations having force of law. The appellants and the like who were appointed in ad hoc capacity, therefore, continued to hold the posts in that capacity only, and there would be no alteration of their status from ad hoc appointees to regular recruits. As held by the Supreme Court in State of M.P. v. Dharam Bir,

reported in (1998) 6 SCC 165, it is not open for any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. The exigencies of service often require ad hoc arrangement till the regular selection gets finalised. If the ad hoc employees who continued as ad hoc beyond one year are to be regularized or deemed to have been regularized as argued on their behalf, that would frustrate the very process of selection and appointment as per the mode and procedure prescribed by the statutory rules, and, as would happen in the present case, no posts would be left for the regularly selected persons, because, two persons cannot hold the same post on a regular basis. As held by the Apex Court in Piyara Singh's case (supra), efforts should always be to replace such ad hoc employee by a regularly selected employee as early as possible. Such temporary employee may also compete along with others for such regular selection / appointment and if he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be held in abeyance for the purpose of allowing the ad hoc employee to continue. When the field is covered by the statutory rules laying down the mode of regular appointments, the Courts will not be justified in directing any regularisation which may be dehors the rules. No illegality should be allowed to perpetuate under the Court orders. Therefore, the Court while holding that the regular appointments by direct selection to the post of Lecturers can be made only as per the recruitment rules and the general rules in consultation with the GPSC as contemplated thereunder, cannot, in the same breadth, order that the ad hoc appointees irregularly continuing beyond one year pending the availability of regular GPSC recruits should be treated as regularized due to their prolonged continuance on ad hoc basis. That would amount to asking the government to violate the statutory rules in the context of the ad hoc appointees while professing to uphold and enforce them in context of the direct recruits. Such self-contradictory approach would be a mockery of the legal system. It would be for the State Government to devise any scheme consistent with the recruitment rules

or a validating statutory provision, if at all the ad hoc appointees are to validly hold the post. It is obvious that the State cannot be compelled by the Court to legislate in the matter for making any statutory exception in the recruitment rules or to retrospectively validate by a statutory provision any such ad hoc appointment.

10. The Division Bench also in para 26 and 26.1 has also observed, which reads as under :-

"26. Though these ad hoc lecturers cannot be directed to be continued contrary to the recruitment rules, nor can they be ordered to be regularized by any mode not warranted by the statutory rules governing the appointments to the cadre of Lecturers, GES, Class II (Collegiate Branch), in the facts and circumstances of the case, we direct that these ad hoc lecturers be treated as a separate class in view of their ad hoc continuance for nearly a decade due to reckless indifference in discharge of duties on the part of the executive and be considered for absorption in such posts as may be available with the government or under the authority of the government in consonance with the statutory provisions applicable to such posts. The State Government is also directed to inquire into the serious lapse of not consulting the GPSC while continuing these ad hoc lecturers contrary to Recruitment Rules beyond one year and fix the responsibility for the careless default that has resulted in the ad hoc lecturers being continued for long without consultation with the GPSC and for the posts not having been filled through the GPSC, as per the Recruitment Rules and the General Rules for over a decade, especially when there was no interim order of any Court, as we are told, which could have prevented the process of regular recruitment.

para 26.1: For the reasons indicated above, we also direct that each of the appellants - ad hoc lecturers who are ordered to be relieved by the impugned action of the State Government be paid, by way of a token compensation, one month's salary, and such amount be recovered from the defaulting officers who may be found by the State Government to be responsible for the inaction in sending requisitions to the Gujarat Public

Service Commission or in not consulting it while illegally continuing the ad hoc lecturers beyond one year of their initial local appointments, without bothering to consult the GPSC under the Rules."

11. In light of this fact when the petitioner was appointed on ad-hoc basis and working on the said post since 1987 and continued till today, however, at the relevant time the petitioner was not found having requisite prescribed experience as per the requirement and therefore, the application submitted by the petitioner to the GPSC was rightly rejected and no interference is required in the said decision taken by the GPSC. Accordingly, present petition is dismissed. Rule is discharged with no costs.

(D.K. Trivedi, J.)

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